

REMARKS/ARGUMENTS

In this amendment, claims 1-12, 14, 35, 36, 38, and 46 are being amended, and no claims are being canceled or added. Thus, after entry of this amendment, claims 1-12, 14, and 35-46 will remain pending. Reconsideration and early allowance of this application is respectfully requested in view of the foregoing amendments and the following remarks.

Claim 1 is being amended in several ways. The “collecting” and “storing” procedures are being separated for clarity. The “detecting” is being eliminated as unnecessary and replaced with “collecting”. The “collecting” is also being split into separate “physiological” and “non-physiological” clauses, both of which recite collecting “in [an/the] implantable device”. The terms “physiological information” and “non-physiological information” are used for clarity. The clause “that affects the sleep quality of the patient” is being deleted in one place as superfluous. A step of evaluating the patient’s sleep quality is being added. Support for these amendments can be found throughout the as-filed application. *See e.g.* FIG. 2 and its corresponding description. No new matter has been added.

Claims 2-8 are being amended to refer to “the at least one [physiological/non-physiological] condition” as appropriate in view of the cancellation of the term “detecting” in claim 1. No new matter has been added.

Claims 9-12 are being amended to refer to the collecting of “the physiological information” for consistency with the amendments to base claim 1. No new matter has been added.

Claim 14 is being amended to specify that the collecting of the non-physiological information includes “sensing the at least one non-physiological condition external to the patient and transmitting the sensed non-physiological condition to the implantable device.” Support can be found, for example, at page 16, line 14 – page 17, line 4 of the specification. No new matter has been added.

Independent claim 35 is being amended in ways similar to claim 1. Claim 35 as amended does not recite a separate storing step, but does recite that “the evaluating ... is

performed at least in part by the implantable device.” See e.g. FIG. 2 and its corresponding description. No new matter has been added.

Dependent claim 36 is being amended to specify that the collecting non-physiological information “is performed in part implantable and in part externally to the patient”. Dependent claim 46 is being amended to specify that the collecting non-physiological information includes “sensing the at least one non-physiological condition external to the patient and transmitting the sensed non-physiological condition to the implantable device.” Support for these amendments can be found e.g. at page 16, line 14 – page 17, line 4 of the specification. Dependent claim 38 is being amended to refer to the “collecting physiological information” of amended claim 35. No new matter has been added.

Claim Rejections - § 103

The Office Action rejected claims 1-12, 14, and 35-46 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,520,176 (Cohen) in view of U.S. Patent 6,200,265 (Walsh et al.), hereinafter “Walsh”, and “Aircraft Noise and Sleep Disturbance: Final Report”, prepared by the Civil Aviation Authority London on behalf of the Department of Trade, August 1980 (hereinafter “CAA report”).

Applicants respectfully submit that the amendments above overcome these rejections. In the “Response to Arguments” section of the Office Action, the Examiner stated, *inter alia*:

“The reason why applicants arguments that the implanted devices are not used to collect *non-physiological* data are not persuasive is because this is not claimed. Rather, applicant has claimed wherein collecting the data is performed *at least in part* by an implantable device. Collecting the *physiological* portion of the data with an implantable device as taught by Walsh would fulfill this limitation, as the physiological data is *at least a part* of the data. There is no claim language limiting the *non-physiological* portion of the data to the implantable device.”

Independent claims 1 and 35 as amended now both specify, among other things, “collecting in an implantable device physiological information ...” and “collecting in the implantable

device non-physiological information ...” (emphasis added). Claims 1 and 35 now therefore explicitly associate the (collection of) non-physiological information with the implantable device. At least this feature, which is directly or indirectly incorporated into each of the pending dependent claims, distinguishes the invention as now claimed from the combination of references asserted in the Office Action. The rejections of claims 1-12, 14 and 35-46 should be withdrawn.

The “Response to Arguments” section of the Office Action also states:

“Examiner does not understand the relevance of applicant’s argument that data is not transmitted to the implantable device of Walsh. This issue is not claimed. It is noted that claim 35 claims wherein *one of* collecting the data or evaluating the data is performed by the implantable device. Walsh discloses at least collecting and storing the data in col. 2: 30-48. Examiner can find no claim language requiring transmitting data collected external to the patient to the implantable device.”

Applicants point out the amendments to dependent claims 14, 36, and 46. Claim 14 now specifies that the collecting non-physiological information “comprises sensing the at least one non-physiological condition external to the patient and transmitting the sensed non-physiological condition to the implantable device”. Claim 36 now specifies that the collecting non-physiological information “is performed in part implantably and in part externally to the patient.” Claim 46 now specifies that the collecting non-physiological information “comprises sensing the at least one non-physiological condition external to the patient and transmitting the sensed non-physiological condition to the implantable device”. These features are submitted to further distinguish these dependent claims from the asserted combination of references.

To the extent Applicants have not responded to any characterization by the Examiner of the asserted art or of Applicants’ claimed subject matter, or to any application by the Examiner of the asserted art to any claimed subject matter, Applicants wish to make clear for the record that any such lack of response should not be interpreted as an acquiescence to such characterizations or applications. A detailed discussion of each of the Examiner’s characterizations, or any other assertions or statements beyond that provided

above is unnecessary. Applicants reserve the right to address in detail any such assertions or statements in future prosecution.

CONCLUSION

This application is submitted to be in condition for allowance, the early indication of which is earnestly solicited. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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